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re: Proposed amendments to the Rules of Criminal Procedure

Dear Chief Justice Corrigan and Justices of the Court:

In accordance with the publication of the proposed amendments to the Rules of Criminal Procedure for comment, below are my comments regarding certain of the proposals; that I make no comment on others does not indicate that I think they lack in importance, but I have simply made comments about several of the proposals I find particularly noteworthy.

1. MCR 6.004: I think the changes should be made. The 180-day bond rule is a judicial creation, and given that statute requires that the court is to take into account on the release decision whether the defendant is likely either to fail to appear or to present a danger to any other person or the community, a finding consistent with the statute that personal recognize will not serve those ends should "trump" the requirement for release on recognizance.

   Also, because the 180-day rule for trial of inmates with pending charges is also statutory, making the rule consistent with the statute seems required simply as a matter of rightful authority over the subject.

2. MCR 6.110: The amendment to paragraph (D) of the rule is particularly important. Currently, the rule allows judges to consider suppression matters at the examination if they wish, but they need not. Where a judge does consider these matters at exam, if the evidence is not excluded, the matter is considered anew by the circuit judge. This is wasteful. Further, prosecutors are not generally prepared for suppression hearings at a preliminary examination. The revision here is more efficient, and places Michigan in step with most of the rest of the country in this regard.

I would make an additional suggestion. Several years ago the court amended the Rules of Evidence to permit the use of hearsay for limited purposes at a preliminary examination (to show ownership, value, lack of permission, and so on). This saves multiple appearances by victims with regard to matters that are seldom of controversy at the examination. Recently the court held that laboratory reports do not fall within either the pubic records or business records hearsay exceptions, a ruling with which I agree. But to have lab technicians, who's time is more importantly spent doing the scientific analysis with a rather overwhelming workload, spend significant time periods testifying at preliminary examinations, is inefficient. So long as the technicians testify at trial, where no stipulation is reached, the defendant's interests are adequately served, and admission of the report should be adequate for probable cause. I would suggest, then, that the court further amend the rules of evidence to allow the admission of these kinds of reports at the examination only.

3. MCR 6.201: Both the requirement that some form of report by an expert by provided when expert testimony is offered, and the strengthening of language regarding providing a witness list, are salutary. Too often games are played by attorneys who deliberately avoid having their expert prepare a report, and who provide no witness list on the ground that they simply don't know who they "intend" to call until the time they decide to call the witness(es).

4. MCR 6.501: The reworking of the motion for relief from judgment rule, particularly the inclusion of time limits, is very important. This office still regularly receives motions for relief from judgment in cases that are 30 or more years old, raising a multitude of what can only be described as "garden variety" appellate issues, and accompanied by massive briefs. Given the passage of time, response is often very difficult. The motion for relief from judgment should be a "safety valve," not a second direct appeal, and reserved for egregious error affecting the outcome, changes in the law that are retroactive on collateral attack, and newly discovered evidence going to actual innocence. In the appellate arena, t he appeal of right should be the "main event," and the motion for relief from judgment should have a limited role. I believe the proposed amendment will be of great help in that regard.

Again, I believe there are other proposals which improve on the current rules; there is nothing in the proposals that I oppose. I urge the court to act on the proposed changes expeditiously.

Sincerely,

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